IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.3.2009

C O R A M :

THE HONOURABLE MR. JUSTICE K. CHANDRU

W.P.Nos.13769, 14136 and 14032 of 1995

G.Ramesh Kumar .. Petitioner in W.P. No.13769 of 1995

K.C.Sethia .. Petitioner in W.P. No.14136 of 1995

Cigatapu Gopi .. Petitioner in W.P. No.14032 of 1995

-vs-

1. Madras Stock Exchange Limited,
rep.by its Secretary at
No.11, Second Line Beach,
Madras-600 001.

2. M/s.Giri Investments,
Stock and Share Consultants,
17/5, Veerappan Street,
Vijay Complex, Madras-79.

3. C.R.Bharathan & Co.
Stock and Share Brokers,
Proprietor: Mahesh Barathan,
Room No.7, I Floor,
26/27, Erabalu Chetty Street,
Madras-600 001.

4. Darla'N Darla,
Stock and Share Brokers,
Proprietor: K.Manoharchand Darla
21, Maruthi Complex, I Floor,
60-A, NSC Bose Road,
Madras-600 079. .. Respondents in W.P. No.13769 of 1995

1. Madras Stock Exchange Limited,
rep.by its Secretary at
No.11, Second Line Beach,
Madras-600 001.

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2. Swito Finance and Estates Ltd.
Rep.by its Managing Director
Mr.Manohar Jain,
92, Mint Street, Madras-79.

3. Vinitha Associates Limited,
8/1, Cenotaph Road, 1st lane,
Teynampet, Madras - 600 018. .. Respondents in W.P.
(R2 and R3 impleaded as per No.14136 of 1995
orders dt.12.12.1995 and 13.1.1997
made in WMP.22949/1995 and
1583/97 respectively)

1. Securities Exchange Board of India,
Mittal Court ''B'' Wing,
224, Nariman Point, Bombay-400 021.

2. The Madras Stock Exchange Limited,
''Exchange Building", 11, second Line
Beach, Madras-600 001.

3. M/s.Paro Leasing & Finance Limited,
54, Sembudoss Street, Madras-1.

4. Coimbatore Stock Exchange Limited,
Chamber Towers, 8/732, Avanashi
Road, Coimbatore-641 018.

5. Bangalore Stock Exchange Limited,
''M'' Block, First Floor,
Unity Building, J.C.Road,
Bangalore-560 002.

6. Hyderabad Stock Exchange Limited,
Bank Street, Hyderabad-500 001.

7. Bombay Stock Exchange Limited,
Phiroze Jeejeebhoy Towers,
Dalal Street, Bombay-400 001.

8. Swito Finance and Estates Ltd.
Rep.by its Managing Director
Mr.Manohar Jain,
92, Mint Street, Sowcarpet,
Madras-79.

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9. Vinitha Associates Limited,
8/1, Cenotaph Road, 1st lane,
Teynampet, Madras - 600 018. ... Respondens in W.P.
(R8 and R9 impleaded as per No.14032 of 1995
orders dt.12.12.1995 and 31.1.1997
made in WMP.22948/1995 and
1941/97 respectively)

PRAYER in WP.Nos.13769 and 14136 of 1995 : Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records of the first respondent, Madras Stock Exchange Ltd. Connected with its Circular No.282/95 dated 29.9.1995 and to quash the said Circular.

PRAYER in WP.No.14032 of 1995 : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records of the second respondent relating to the issue of letter dated 28.9.1995 requiring the petitioner to pay a sum of Rs.10,00,000/- (Rupees ten lakhs only) and the Circular No.282/95, dated 29.9.1995 issued by the second respondent, requiring all the members to square up all the outstanding position in the third respondent company at Rs.87/- per share and quash the same and thereby forbearing the second respondent from giving effect to the circular dated 29.9.1995 and further direct respondents 1 and 2 to investigate into the circumstances under which there has been an increase of price of shares of the third respondent Company from Rs.16/- to Rs.94/- per share within a span of 22 days and also to find out there has been any insider trading or cornering or rigging of price in relation to the shares of the third respondent company.

For petitioner in
W.P.Nos.13769 / 1995 &
14136 of 1995 : Ms.Aruna Ganesh

For petitioner in
W.P.No.14032 of 1995 : Mr.T.K.Seshadri

For respondents in
W.P.No.13769 of 1995 : Mr.A.S.Kailasam (R1)
Mr.K.K.Sanchati (R4)

For respondents in
W.P.No.14136 of 1995 : Mr.A.S.Kailasam (R1)
Mr.R.G.Narendran (R2)
Mr.R.Murari (R3)

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For respondents in
W.P.No.14032 of 1995 : Ms.K.v.Vani for
Mr.Rangarajan for R1
Mr.T.S.Sivagnanam (R3)
Mr.V.Sankaranarayanan
(R4)
Mr.A.S.Kailasam (R2&6)
Mr.R.A.Narendran (R8)
Mr.R.Murari (R9)

O R D E R

The petitioner in W.P.No.13769 of 1995 seeks to challenge the Circular No.282/95 issued by the Madras Stock Exchange Limited (for short 'MSEL') dated 29.9.1995. By the impugned Circular, the MSEL communicated the decision taken in the Council Meeting held on 29.9.1995 and it is as follows:-

''(i) to suspend trading in the shares of Paro Leasing until further notice;

(ii) to instruct the members to square-up all the transactions that are remaining outstanding as at the close of business on Thursday the 28th September 1995 as per the Books of Accounts either with members or with non-members, constituents, clients, etc. at Rs.87/- per share or the contract price whichever is higher".

2. In W.P.No.14032 of 1995, the petitioner Stock Broker attached to MSEL challenged the Circular dated 29.9.1995 and also the demand for payment of Rs.10 lakhs and further ordered for investigation into the circumstances under which there was increase of price of shares in the third respondent Company from Rs.16/- to Rs.94/- per share within a span of 22 days.

3. W.P.No.14136 of 1995 again challenged by a Share Broker the same circular dated 29.9.1995. These writ petitions were admitted. When the matter came up on 12.12.1995, this Court passed the following interim direction as found in paragraph 20, which reads as follows:-

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''20. Hence, I pass the following order:-

i. In modification of the order dated 13.10.1995, the members are directed to square up of the transactions that are remaining outstanding at the close of the business on 28.9.1995 as per the books of accounts either with the members or with non-members, constituents, clients etc. at Rs.75.00 per share or the contract price whichever is higher within two weeks from

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today;

ii. The M.S.E. In the event of the petitioners succeeding in the writ petitions, shall be responsible to make good the loss of the petitioners in respect of the transactions in question. It shall be equally open it to adjust the difference of amount if any remaining, out of the security deposit or marginal money in the event of the petitioners failing in the writ petitions, or to take other steps to recover the difference of amount if any remaining on the basis of the impugned circular;

iii. Subject to the petitioners in W.M.P.Nos.22328/95 and 22501/95 complying with the condition No.1 above and other conditions as are applicable to other members of the Exchange in the ordinary course, they shall not be prohibited from trading until further orders; and

iv. The SEBI to complete the investigation into the price movement of the Paro Leasing shares within a period of two months from the date of receipt of copy of this order pursuant to the investigation already initiated by it, as stated in paragraph 3 of the abovementioned fax message.

4. Aggrieved by the interim order, the matter was taken before the Division Bench in W.A.NOs.1429 and 1431 of 1995. The Division Bench disposed of the writ appeals by a common order dated 02.1.1996. In the operative portion of the order, it has been directed as follows:-

''5. For the reasons stated above, in modification of the order passed by the learned Single Judge, we dispose of the appeals in the following terms:-

1. the appellant in W.A.No.1429 of 1995 shall pay a sum of Rs.10,00,000/- within one week from today (2.1.1996). In the event the appellant in W.A.No.1429/95 fails to deposit the said sum of Rs.10,00,000/- within one week from today (2.1.1996), it is open to the respondents to proceed with the matter in accordance with law. The Madras Stock Exchange is directed to receive the pay order for the said amount and other assets.

2. The additional security amount already paid shall remain with the Stock Exchange, Madras and the same shall be adjusted in terms of the final order that may be passed in the writ petitions. The marginal money paid by both the appellants is permitted to be adjusted.

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3. The delay of two days in depositing the amount of Rs.5,69,670/- by the appellant in W.A.No.1431/95 is condoned."

5. Subsequently, when the matters were posted before a single bench, a clarification was sought as to whether the interim order dated 12.12.1995 covers all the members of the MSEL and just the petitioners alone. The learned Judge, by an order dated 06.3.1997, ordered as follows:-

''.... In my view, the order does not need any clarification as it is plain and clear. In other words, it extends to all the members of the Madras Stock Exchange Limited. But as regards the operation of the order from which it can effective, I must state that this order could be effective as against such of the members who are not writ petitioners only from the date when it is passed i.e. from 12.12.1995 and when such members came to know about the order. But in case of such members, who have squared up the transactions before passing of this order, no fault can be found with them. Subject to the further orders to be passed in the writ petitions and subject to action taken by the Madras Stock Exchange Ltd. in accordance with the rules and subject to what is stated above, both these petitions are disposed of."

6. Pursuant to the direction issued by this Court, the Securities and Exchange Board of India (for short 'SEBI') filed a counter affidavit dated 08.2.2000. In paragraph 7, it was averred as follows:-

''7. .... it is denied that no steps have been taken by the first respondent. As stated in the affidavit filed on behalf of this respondent earlier, this respondent initiated investigations in the matter and concluded the investigations as directed by the Honourable Court vide its order dated 12.12.1995.It is further submitted that as per the directions of the Honourable Court, the answering respondent completed its investigation into the irregular trading pattern and abnormal price rise in the scrip of M/s.Paro Leasing and Finance Ltd. Pursuant to the investigation the following actions were taken:

Pursuant to the investigations the following brokers have been suspended.

1. M/s.Sri Pal Jain,Member BSE
2. M/s.Pawan J Chaudhari, Member BSE
3. M/s.Darla & Darla, Member MSE
4. M/s.Vinita Associates, Member MSE
5. M/s.Dolia & Dolia, Member MSE
6. M/s.Libran Shares, Member CSE

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7. M/s.Ajay Vakharia, Member BSE

The following non-intermediaries have been debarred from dealing in capital market:

1. Shri Vinod Doshi
2. Shri Dhanpat Singh Bokharia
3. Smt.Prabha Bokharia
4. Shri Sampath Kumar Parekh
5. Swito Finance & Estates Ltd.
6. Tatia Finance & Leasing Ltd.

In additional to the above, adjudication proceedings were initiated and penalties were levied on the following persons/entities:

1. P .K.Bathera
2. M/s.Bokharia
3. M/s.Brilliant Investments
4. M/s.Unique Finance
5. Tatia Finance and Leasing Ltd.

7. In the further counter affidavit dated 27.8.2002, it was stated that the investigation by SEBI revealed that there was price rigging in the scrip of the Paro Leasing and Finance Limited. In paragraphs 4 to 6 of the counter affidavit, it was averred as follows:-

Para 4. ... It was found that the total equity shares of PLFL are 30,00,000 shares out of which the promoters hold 17,50,000 shares constituting 58% of the total equity capital of the company. The rest of the 12,50,000 shares were offered to the public vide the public issue which opened on 15th February 1995. SEBI investigations revealed that only 17 persons are holding 12,70,600 shares i.e. the total floating stock of the company. Further, it was seen that persons related directly (by virtue of funding the acquisitions) and indirectly (by virtue of being employees, close friends and belonging to the same community) to Tatia Group of Companies are holding 9,78,800 shares of PLFL. Tatia Finance & Leasing Ltd now called Tatia Stock & Options Ltd have masterminded the creation of a corner in the scrip of PLFL, which has resulted in an artificial price rise and a false market in the scrip. They had accumulated this position with the knowledge that the floating stock of PLFL was in their control. This respondent had launched criminal prosecution under section 24 of the SEBI Act, 1992 for the violation of Regulation 4 of SEBI (Prohibition of Fraudulent and Unfair Trade

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Practices relating to Securities Markets) Regulations.

Para 5. The criminal complaint is pending as C.C.No.71 of 1998 in the Court of Additional Chief Metropolitan Magistrate Court I, Egmore, against the following persons:-

1. M/s.Tatia Finance and Leasing Ltd.
2. Mr.Pannalal Tatia
3. Mr.Dhanpat Singh Bokharia
4. M/s.Bokharia Investments
5. Ms.Prabha Bokharia
6. M/s.Unique Investments
7. Mr.Sampath Kumar Parekh
8. M/s.Brilliant Investments
9. Mr.Manohar Jain

Para 6. It is submitted the said criminal complaint is posted for hearing on 13.9.2002 for trial.

8. On behalf of the MSEL, counter affidavits were filed in two writ petitions, viz., W.P.Nos.14136 of 1995 and 14032 of 1995. A preliminary objection regarding the maintainability of the writ petition was taken by the MSEL. Without prejudice to the contention that the writ petition was not maintainable and also the necessary affected parties are not before the Court, it was stated that under bye-law No.72A, the MSEL has got power to fix the price and as per the usual practice, the average price which prevailed on the previous working day, viz., Rs.87/- was fixed by them. It was also stated that they have power to levy additional security deposit in addition to the normal security deposit. It was also stated that the writ petitioner himself had traded the scrip at Rs.87.50 on 28.9.1995 they are estopped from questioning the squaring up of the transaction at that price. They cannot be heard to state that the price was unreal and not a fair market price.

9. Though Mr.T.K.Seshadri, learned Senior Counsel contended that the steps taken by the SEBI was not satisfactory, this Court is not inclined to go into those issues, since pursuant to the directions issued by this Court, a criminal case has been launched before the Additional Chief Metropolitan Magistrate Court in C.C.No.71/98 and also as per the provisions of the SEBI Regulations 1996, registration of brokers involved in such contract was also suspended and appropriate punishments have been imposed on the erred stock brokers. Since the SEBI has undertaken to pursue action in terms of the SEBI Act, this Court is not inclined to go into the contentions raised by the petitioners.

10. Hence, the above writ petitions stand dismissed. This will not preclude the SEBI from pursuing its criminal case as well as

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other actions taken pursuant to the order passed by this Court. However, there will be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Secretary,
   Madras Stock Exchange Limited,
   No.11, Second Line Beach,
   Madras-600 001.

2. Securities Exchange Board of India,
   Mittal Court ''B'' Wing,
   224, Nariman Point, Bombay-400 021.

3. Coimbatore Stock Exchange Limited,
   Chamber Towers, 8/732, Avanashi
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   Unity Building, J.C.Road,
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   Bank Street, Hyderabad-500 001.

6. Bombay Stock Exchange Limited,
   Phiroze Jeejeebhoy Towers,
   Dalal Street, Bombay-400 001.

7. The Madras Stock Exchange Ltd.,
   'Exchange Building',
   11,Second Line Beach, Madras - 1

+ 1 CC to Mr.Rangarajan,Advocate SR.NO.10870

+ 3 CC to Mr.A.S.Kailasam,Advocate SR.NO.10655 to 10657

W.P.Nos.13769 and 14136
and 14032 of 1995

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